UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	Case No. 22-60043
	Chapter 11
FREE SPEECH SYSTEMS, LLC,	
Debtor.	
IN RE:	Case No. 22-33553
	Chapter 11
ALEXANDER E. JONES,	
	515 Rusk Street
	Houston, TX 77002
Debtor.	
	Monday, March 27, 2023
	1:00 p.m.

TRANSCRIPT OF EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE USE OF CASH COLLATERAL PURSUANT TO SECTION 105, 361, AND 363 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(B) AND (II) GRANTING ADEQUATE PROTECTION TO THE PRE-PETITION SECURED LENDER [6];
AMENDED MOTION FOR RELIEF FROM STAY [406];
JOINT MOTION TO REVOKE THE DEBTOR'S SUBCHAPTER V ELECTION [468];
MOTION FOR RELIEF FROM STAY, FEE AMOUNT $188 [113]
BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED.

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Also Present:	PATRICK MAGILL

(Proceedings commence at 1:00 p.m.)

THE COURT: Good afternoon, everyone. This is Judge Lopez. I'm going to call the 1 p.m. case. Today's March 27th. I'm going to call the combined cases of the Alex Jones and Free Speech. I'm going to turn my camera on in just a moment. (Indiscernible) Take a look at an interesting set up here.

I'm going to mute the line. If you wish to make an appearance, I'm going to ask that you please hit "five star."

Why don't I take appearances and I'll start in the courtroom. Mr. Battaglia, good to see you.

MR. BATTAGLIA: Good morning, Your Honor. Ray Battaglia for Free Speech Systems.

THE COURT: All right, good afternoon.

MR. BATTAGLIA: Mr. Magill, the chief restructuring officer, is in the court as well.

THE COURT: Okay. I see you there. Good afternoon.

MS. FREEMAN: Good afternoon, Your Honor. Elizabeth Freeman on behalf of Melissa Haselden, the Subchapter V Trustee, and Ms. Haselden is in attendance today.

THE COURT: Okay. Good afternoon.

MR. LEMMON: Your Honor, Steve Lemmon on behalf of PQPR.

THE COURT: Okay. Good afternoon, Mr. Lemmon.

MR. RUFF: Good afternoon, Your Honor. Jayson Ruff and Ha Nguyen for the U.S. Trustee's Office.

THE COURT: Okay. Good afternoon. Good to see both of you.

MR. KIMPLER: Good afternoon, Your Honor. Kyle Kimpler on behalf of the Connecticut plaintiffs. My co-counsel, Alinor Sterling, is here as well. And we're joined online by Mr. Ryan Chapple.

THE COURT: Okay, good afternoon. Good to see all of you.

MS. STERLING: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. HARDY: Good afternoon, Your Honor. Jennifer Hardy of Willkie Farr on behalf of the Texas plaintiffs. In the courtroom, I also have Mr. Avi Moshenberg and Mr. Jarrod Martin.

THE COURT: Okay. Good afternoon.

MS. HARDY: Thank you, Your Honor.

THE COURT: Good afternoon. Good to see everyone. Okay. And I'm going to call to make appearances in both cases, so anyone wishes to make an appearance and any -- everyone's appearance will serve for both cases.

Anyone from the Committee in the Alex Jones case, wish to make an appearance, I'd ask that you please hit "five star" now.

MS. BRAUNER: Good afternoon, Your Honor. Sara Brauner, Akin Gump, on behalf of the Committee.

THE COURT: Okay, good afternoon. I should have started by asking if there was anyone from the debtors, from Mr. -- representing Mr. Jones that maybe wish to make an appearance today. I'd ask that you hit "five star."

MS. STEPHENSON: Good afternoon, Your Honor. Christina Stephenson for the debtor, Alex Jones.

THE COURT: Good afternoon. Good to see you, Ms. Stephenson. And I will say at the outlet if you hear me sniffling, it's allergy season in Houston and I won't be alone. I apologize in advance.

Okay. Anyone else wish to make an appearance? Please hit "five star" at this time.

MR. JORDAN: Your Honor, Shelby Jordan, co-counsel for Alex Jones.

THE COURT: Good afternoon, Mr. Jordan.

MR. JORDAN: Good afternoon.

THE COURT: Okay. Anyone else?

Okay. Mr. Battaglia?

MR. BATTAGLIA: Your Honor, Ray Battaglia for Free Speech Systems. I filed an agenda last night. There are three items on today's docket on the Free Speech Systems case. There's one on the Alex Jones docket. There's another matter that was filed Friday night that I suspect is going to require some attention today.

So obviously the debtor filed a disclosure late

Friday evening.

THE COURT: Uh-huh.

MR. BATTAGLIA: And I think it's fairly complete, but I'd just as soon be available and Mr. Magill available, to answer any questions the Court might have about that disclosure.

THE COURT: Okay. Thank you.

MR. BATTAGLIA: And then I'm happy to address the other matters. I don't know whether we want to take that up first or --

THE COURT: Why don't we just confirm what matters that everyone's going forward on today and then we can kind of take them up one by one.

MR. BATTAGLIA: We have the cash collateral motion, Docket Number 6. The proposed order was filed, I think Friday night as well, Docket Number 535. I've had no comments. Mr. Nguyen told me today the U.S. Trustee has no comments.

THE COURT: Okay.

MR. BATTAGLIA: Usually I get most from him. And the secured creditor, PQPR, has approved the budget as well. So I'm unaware of any comments or outstanding comments or opposition to the proposed form of order. The order is substantially the same as the 9th, with the exception now it's the 10th.

THE COURT: Got it. Okay. And so that's cash

collateral. And then now we have the motion to revoke what I would call.

MR. BATTAGLIA: Yeah. And I unfortunately my -- I didn't fix the title. It is the joint motion to revoke. That is opposed, and I assume we'll need some time on the docket.

And lastly is the motions for relief from stay, Docket Number 406 in the Free Speech Systems case. There are eight exhibits filed in response to that as well. I've not been directly involved in discussions between Ms. Driver and Texas plaintiff's counsel, but I -- Mr. Martin and I have had a conversation that there's an effort afoot to reach an accommodation agreement on the termination of the stay at an appropriate time. And that, I think, still isn't fully baked, is my impression, and that I think the parties want to pass the hearing to a later date. Ms. Hardy can address it more completely --

THE COURT: Yeah, that's --

Mr. BATTAGLIA: -- than I do. I know we're not going forward today.

THE COURT: Yeah. Okay. Ms. Hardy, can you just confirm that the parties choose not to go forward today? I'm completely fine with it. I just want to -- maybe we can just --

MS. HARDY: Yes, sir.

THE COURT: -- talk about that in rescheduling dates.

MS. HARDY: That's right. We hope to have a 9019 motion in front of Your Honor, with respect to that matter, but if not, we will reach out to reschedule the contested lift stay.

THE COURT: Okay. Can -- and just so you know -- kind of just have it in the back of your mind. You know, if something's up in the next two weeks, I don't need know about it. But if it goes beyond two weeks and we're kind of sitting in mid-April and nothing has been done, someone just reach out to my case manager. If not, we'll just get something on the docket and we'll see how dates go.

MS. HARDY: Okay. Thank you. Your Honor, I do believe we probably need at least two weeks because we have put discovery in abeyance on the fact issues with respect to the lift stay pending settlement.

THE COURT: Okay. Okay. And it would be a 9019 to resolve the lift stay?

MS. HARDY: That's right, Your Honor.

THE COURT: Okay. And at some point, I suspect we're going to need a status conference on -- or some kind of either status or scheduling conference in connection with the adversaries, right?

MS. HARDY: Yes, Your Honor. We on -- I believe it was Friday, we filed scheduling motions on an emergency basis, and the Connecticut plaintiffs as well, seeking a scheduling

order with respect to the adversary proceedings.

THE COURT: Okay. Why don't we -- one way or the other, we'll schedule something in the next two weeks on that.

MS. HARDY: We did request an emergency hearing date on the scheduling motion for Friday. I'm not sure if Your Honor has availability that day.

THE COURT: I unfortunately am flying back from somewhere on Friday, so that's going to be tricky, but maybe next Monday would work.

MR. BATTAGLIA: Your Honor, I've not seen the motions, I've -- probably because I've not made an appearance in the adversaries yet, but I didn't get an email notification.

THE COURT: Yeah, you would need to have made an appearance in the adversary. And I wanted to let everyone know, if you filed a pro hac in the main case, we're going to treat it as a -- you're admitted for all purposes, so no need to refile.

I think next Monday or Tuesday would be the date that I could -- I know I could do, on that. Why don't we --

MS. HARDY: And I'm happy to send Mr. Battaglia the motion as well.

MR. BATTAGLIA: I don't mean that as an accusation. I just hadn't seen it.

THE COURT: No, no, no, I know. You're -- why don't we -- yeah. I would tell you realistically probably -- ooh,

next Monday -- there's a lot going on next Monday. So I'm thinking, realistically, April 4, but I'll check with my case manager, next Tuesday. Okay?

MS. HARDY: Okay. Thank you, Your Honor.

THE COURT: Alrighty. Thank you.

Okay, so I think we'll just note then for the -- just a docket entry on the motion to lift stay is deemed passed to a date to be determined. I'll just keep it simple there.

Why don't we, before we talk about cash collateral, talk about the disclosures that were made?

MR. BATTAGLIA: Yes, sir.

THE COURT: Talk about that.

MR. BATTAGLIA: Your Honor, I think we've made --

THE COURT: If you could just make sure the mic gets a little closer.

MR. BATTAGLIA: Sure.

THE COURT: I just want to make sure we have a good record.

MR. BATTAGLIA: We -- we've tried to make a pretty fulsome disclosure. Mr. Magill, I think as a result of seeing the Jones schedules with an entity called Mountain Way and receivables reflected, was curious as to what it was; investigated it; and discovered that it was an entity that was formed in August and started -- apparently started to do business in September of 2022.

THE COURT: You know when it was formed in August?

MR. BATTAGLIA: Late -- mid to late August, the last half of the month. I -- I'm --

THE COURT: Okay. Okay.

MR. BATTAGLIA: I'd tell you precisely, but I don't have it in front of me.

THE COURT: Okay. No, no, that's all I needed for now.

MR. BATTAGLIA: It was formed by an employee of Free Speech Systems. His name's knowable, but I'd just as soon not put it on the record. I've met this gentleman once or twice. He's a pretty unsophisticated person involved in the production side of the business and apparently had an arrangement to share 90/10 with monies that Mountain Ways [sic] derived. Mountain Way was in turn selling advertising on the FSS channel, whether that was banners, whether that was live participation of advertisers, or just a live read. That's generally what it was, without sharing a -- any portion of revenues with Free Speech Systems.

When Mr. Magill discovered this, he immediately reached out to me and to the Sub V Trustee to disclose what it was or what we thought it was. And it actually morphed while we were evaluating it. Approached the employee and said, what is this? And the employee was completely forthcoming. Mr. Jones was completely forthcoming that approximately, I

believe the disclosure says, $257,000 in ad revenue went to Mountain Way with -- without any of it being shared.

Whether or not anybody else is entitled to a fee off of that is not particularly relevant at this point in time. We simply instructed them that that can't be, that that money belongs to Free Speech Systems. And we approached Ms. Driver and told her that that money belonged to the debtor and the Jones estate was cooperative. And they have -- I think as of Friday, we have 111,000. The 86,000 that was still on deposit with Mountain Way has been wired to the debtor, Free Speech Systems. And 25 of the Alex Jones has been wired to Free Speech Systems.

THE COURT: 26 out of the 100 and --

MR. BATTAGLIA: 25 out of the remainder, so it's another 146,000 or so. Apparently that they had intentions to wire the balance, the entire balance, the money is disclosed in the Jones schedules. It's still sitting in the DIP account. They have a limitation on how much they can wire.

So my impression, and Ms. Stephenson can confirm this, is that they're going to get us a cashier's check this week for the remaining balance of the funds that Mountain Way has. And in addition, as it's noted in the disclosure, any future revenues that are accounts receivable to Mountain Way will be turned over, either redirected to Free Speech Systems, or turned over upon receipt to Free Speech Systems.

THE COURT: You know what this -- the period of time in which Mountain Way sold --

MR. BATTAGLIA: Yeah. September, mostly the fourth quarter of last year --

THE COURT: Like September through December?

MR. BATTAGLIA: -- the first quarter. There are -- I think there were six advertisers, that -- is that right?

MR. MAGILL: Three individual advertisers.

MR. BATTAGLIA: Three individual advertisers who were contracted through Mountain Way. And they were -- I've seen the invoices or you know, a couple of them were $50,000 invoices and a couple of them were smaller.

THE COURT: Was it like around January time period, September?

MR. BATTAGLIA: No, it -- the first invoices I recall seeing are September or October.

THE COURT: I mean, just when it ended.

MR. BATTAGLIA: When it ended?

THE COURT: Do you recall?

MR. BATTAGLIA: Let me ask Mr. Magill.

(Counsel confers with client)

MR. BATTAGLIA: 1st of March, Your Honor.

THE COURT: 1st of March?

MR. BATTAGLIA: Yes, sir.

THE COURT: Okay. So it started about two weeks

after I entered the first cash collateral order, reducing Mr. Jones's amount to about $10,000. And then here you're telling me that -- I entered a cash collateral order around August the 5th that reduced Mr. Jones' salary to about $10,000. And that was for the reasons stated on that at that time. And then, so what you're telling me is that someone had formed an organization about a couple of weeks later and then started selling advertisements on the side. That's --

MR. BATTAGLIA: That's what it appears to be, yes.

THE COURT: Okay. Okay.

MR. BATTAGLIA: So -- and I'm happy to address any other questions.

THE COURT: No, I think you did what you're supposed to do, which is disclose it to the Court, and I very much appreciate it.

MR. BATTAGLIA: It's obviously sensitive and it does affect individual employees who I don't think had any mal intent.

THE COURT: No.

MR. BATTAGLIA: But --

THE COURT: No, no, no. I just think --

MR. BATTAGLIA: -- be that as it may, we didn't file it under seal.

THE COURT: I do appreciate it. And what I would say is, look, this is -- I think disclosure is incredibly

important. I appreciate it and so is transparency. All right.

And I can't forget that this is the third case, right? So they were -- so it -- this troubles me in the sense that the InfoW cases -- and so everybody had to learn a little bit about, you know, now the fourth case, I see today, with three debtors back then. But everybody learned a little bit about what you can and can't do in bankruptcy and disclosures and property of the estate.

And so this is troubling. I appreciate the disclosure. I'm glad the money is coming back. I understand that the Committee is -- I read what the Committee wrote and I understand the Committee's position that there's money theoretically being transferred from the Jones account that constitutes property of the Jones estate. I assure you that money was coming back one way or the other if the facts held up the way I thought they were, just would have required an order from me. But if this is going to work itself out, let's just proceed.

I look forward to -- I need to make sure that the funds come back and once they are, I want somebody to let me know. I think we've been learning a lot more. I think -- I appreciate the work of the Subchapter V Trustee. I look forward to reading the final report that gets completed, whenever that's done. I know that's coming soon and I look forward to the amended schedules.

And I think in the Jones case, I'll just take a hard look at where things are and maybe I call a hearing on about where we are, maybe I don't. But I think -- at a minimum, I think, depending on what I see in the next week or so -- I'm troubled by what I see now, hope it's not a pattern. I hope it was a one-off. If it turns out to feel more like a pattern, then maybe we just need to hold an evidentiary hearing here and see where things go. But I want to make sure that I don't want to make any assumptions.

I think we should all be a little bit smarter in the next couple of weeks. We'll read, give Mr. Jones an opportunity to answer any questions if there are any. Well, let's just see where things go.

MR. BATTAGLIA: And Your Honor, if I can just add a little, small amount of assurance, because it's hard to know a negative here. But that -- that's the circumstance that Mr. Magill found himself in.

THE COURT: Yep.

MR. BATTAGLIA: But we have investigated whether individual employees or contract parties that are close to us, to Free Speech Systems, have any business entities that they've formed. And Mr. Magill has talked to those employees and asked them whether they have relationships with Free Speech Systems or Mr. Jones, and they appear to be unrelated entities. He has disclosed and discussed to all employees that they are not to

use Free Speech Systems' assets other than for Free Speech Systems business. That includes, obviously, advertising space and, and basically the channels. And so I think that Mr. Magill is certainly aware of the responsibilities of the debtor --

THE COURT: Mm-hmm.

MR. BATTAGLIA : -- and of the CRO and is doing his level best to try to keep this from happening. This is just one that was unknowable until Mr. Jones filed his schedule.

THE COURT: I understand. And Ms. Stephenson, what I would ask, and Mr. Jordan, is if there are any more Mountain Ways out there, I'd like to know about them. I'd rather them not get -- be discovered by some other party. If they're out there, I'd like to know about them. And if there are, let's just -- transparency's important. And I appreciate that they're in the schedules, but if there's something else that needs to happen, then I think we all need to know. And I'd appreciate if the Committee was made aware of any others and as well as Free Speech. So -- that -- that's where I am on that, unless anyone else has anything else to tell me, I should say with respect to the disclosure.

MR. BATTAGLIA: Yes, sir.

THE COURT: And if -- I've unmuted the line. Let me just check because I -- there is --

MS. DRIVER: Okay.

THE COURT: Okay. I've unmuted a 254 line.

MS. DRIVER: And Judge Lopez, this is Vickie Driver.

THE COURT: Yes, Ms. Driver?

MS. DRIVER: I wasn't going to make an appearance because Ms. Stephenson was handling the hearing, but I have been the one handling this disclosure.

Your Honor, we -- I did believe that I disclosed this to the Committee. I think the Committee remembers me talking about it, but doesn't remember specifics. But I did attempt to disclose this to them in our weekly call that we have on Friday. So it certainly wasn't meant to be not something that they could not and would not know.

And because -- the only reason all the money hasn't been returned is that our bank that has the DIP account has a $25,000 daily wire limit and a $50,000 monthly limit that I've verified with the bank. And so we are simply going to deliver a check when we are down in Austin to Mr. Magill when we're down there for the 341 meeting.

So by Friday you should have a notice filed on the docket that says it's all been done. And this notice is being filed in Mr. Jones's case. There was just a slip up from me that it didn't make it to the person to file it when we were working on schedules last week.

THE COURT: No worries.

MS. DRIVER: So I am getting that filed in our case.

It will reflect that the 25,000 went and that the remainder will be delivered on Thursday.

And you know, we absolutely 100 percent want full disclosure on this. I do think we were able to discover it and make it to Mr. Magill before we were told by the Subchapter V Trustee that it was a problem. So I just want you to know that as professionals, when we discovered it, we got it to -- we went to Mr. Magill as quickly as we could to say, hey, let's try to figure out what to do with this because we're learning things about this, and we want to make it right.

THE COURT: Okay.

MS. DRIVER: And Mr. Magill was very -- you know, we've just been trying to work with him. Basically, Mr. Jones, as you pointed out at a hearing, is not making enough money. And so, I think --

THE COURT: I don't know if I pointed that part out. I don't know if I pointed that part out.

MS. DRIVER: And so he needs -- he -- I will tell you -- he can't cover my fees and BlackBriar's fees if he doesn't have more monthly income.

THE COURT: I'm just -- I'm not saying -- I'm just saying, I didn't say that. I just want the record to be clear. I didn't say that. It may well be true. I'm just saying I didn't say that. I -- but I understand the point.

MS. DRIVER: Sorry, my apologies.

THE COURT: I understand the point.

MS. DRIVER: But we're -- we are -- but we -- he understands that he's not allowed to do anything of this sort, and that, you know, we're going to work with Mr. Magill to figure out the best way to either augment his employment with truly, truly third-party deals, or whether we can get his salary increased in the case.

Fortunately, I think some of the performance has been up, so they may be able to afford it a little bit better now. But again, we did disclose it and we wanted to make it right and it's going to be made right.

THE COURT: Okay. Thank you. Then --

MR. BATTAGLIA: And Your Honor --

THE COURT: Just so the record's clear, I believe what I said was, that I was open to any motions if anyone had -- just, does anyone else -- anybody seeks a motion to request it for additional -- an adjustment? Ms. Rosario is free to file it and we can take it up and deal with it. That was, I believe, what I said.

MR. BATTAGLIA: Mr. Magill is insistent that I make sure it's clear on the record that, other than the schedules in the Jones case, which disclosed Mountain Way, he discovered all of this on his own and then went to Ms. Driver and the Jones counsel and the Sub V Trustee.

THE COURT: Yeah.

MR. BATTAGLIA: But I just want to --

THE COURT: That's what I mean. So for everyone, I think you're hearing me loud and clear, and I think we're all on the same page. I -- just no more discoveries from anyone is really what I'm looking for. Transparency is what we're after and I know all the professionals are working hard on this, and it's not to make a statement about any of the professionals. I'm just saying it so that it's said out loud.

Mr. Ruff?

MR. RUFF: Your Honor, I just -- I'll try to be brief. But I do think it's important just to note that, while the professionals are doing what professionals should do when they discover stuff like this, is try to advise their client to do, you know, what's the best thing in light of the facts. These are not good facts that have come to light. And you know, last Friday's disclosure essentially was a disclosure of a scheme that was put in place intentionally to divert assets away from an estate; income, specifically, from a bankruptcy estate to the insider and to the owner. And we believe it's important to find out who was involved in this scheme, who devised it, not only -- who all received from it, and who was aware of it and when.

It's also another important data point, Your Honor, to take into consideration. Nothing happens in a vacuum here. This is the third -- we're in our third case, round of cases

here. And there were disclosure issues in the first case. And we've heard repeatedly, from the very first set of cases that were filed, continuing into FSS, and then also with Mr. Jones as to one of the goals was to have open disclosure of things, and -- so that the parties could negotiate in good faith.

And again, here's another data point where we're just discovering stuff. But it wasn't disclosed. It was discovered, which was just reiterated by Mr. Battaglia. The CRO discovered this. It was not disclosed.

And so anyways, Your Honor, we reserve all of our rights to take whatever actions are appropriate and necessary. You know, but I guess I'll just leave it at that, Your Honor.

THE COURT: No, I appreciate it.

MR. RUFF: It's very disturbing -- it's distressing to see this.

THE COURT: Yeah. I -- and I will call it concerning. I don't want to necessarily -- and I understand the Trustee's position. I won't call it a scheme. I will call it troubling in light of the dates from where we are.

I -- let's just see where this goes. But I appreciate the comments and I understand the reservation of rights. And I think you're hearing me stress how important disclosure and transparency are. The process doesn't -- the bankruptcy process just doesn't work without it.

Yes, Counsel?

MR. KIMPLER: Your Honor, Kyle Kimpler from Paul Weiss on behalf of the Connecticut plaintiffs. I appreciate what the U.S. Trustee said about this. And just for the record, obviously this is extremely concerning to my clients.

I do not abide by the three-strike rule on fiduciary duty violations. I'm a little bit concerned about the idea that there is no harm, no foul here. The money's been returned. We've promised not to do it again.

Once a fiduciary has manifested an intent to violate their fiduciary duties, my client's view is that fiduciary cannot be trusted. I think that's all I would say for now other than to reserve our rights, just to emphasize, again, how seriously we are taking this.

THE COURT: Thank you.

MR. BATTAGLIA: Your Honor, I want to be clear that I feel I bear some fiduciary responsibility to this Court, and Mr. Magill does as well. And we feel like we've lived up to our fiduciary responsibilities in full here. And I'm -- I really don't take kindly to sort of a broad aspersion of breaches of fiduciary duties. We discovered this. We did what we were supposed to do, and we've done the best we can for the creditors and for this Court.

THE COURT: Yeah. I've got no issue with any of the professionals from what I can tell. I understand, Mr. Battaglia.

MR. KIMPLER: I was not accusing the professionals, Your Honor.

THE COURT: No, I know. I know you aren't. I know you aren't. Okay. Let's take up --

MR. BATTAGLIA: Cash collateral.

THE COURT: -- cash collateral. Well, it makes cash collateral a little easier for me now, hearing that the money's coming back.

MR. BATTAGLIA: Your Honor, the proposed order with the budget was uploaded. It is at Docket Number 535. As I said, I've received no comments. I'm happy to address any questions the Court might have, I assume primarily related to the budget itself, if any.

THE COURT: Yeah. I'm approving this subject to the -- with the understanding that the funds are coming back into the estate. If the funds hadn't, we would have a different conversation about cash collateral, but I do take Ms. Driver at her word, and so we'll proceed.

MR. BATTAGLIA: The budget does not disclose the returned funds, obviously. And I --

THE COURT: No, I understand. But it --

MR. BATTAGLIA: And it's not --

THE COURT: -- contemplates payments going out?

MR. BATTAGLIA: Clearly, we -- yes. Exactly.

THE COURT: I got it.

MR. BATTAGLIA: This is more an expense side budget than the revenues or estimates. And I, frankly, do expect an additional as much as $400,000 from Orion that's been holding an offset for a chargeback deposit account, and perhaps more after that. But that may occur during this month, and it's not reflected in the budget either because it's -- neither one of them were known or certain at the time the budget was produced.

THE COURT: Okay.

MR. BATTAGLIA: At least the --

THE COURT: I would say if things change in terms of the return of the funds, I may revisit the 10th interim.

MR. BATTAGLIA: You'll hear from me, Judge, if it doesn't happen by Friday.

THE COURT: Okay. Okay.

MR. BATTAGLIA: And that leaves the --

THE COURT: Oh, wait, we -- I have to set another hearing on this. That's the --

MR. BATTAGLIA: I'm sorry. Yes, you do.

THE COURT: Yeah. Yeah.

MR. BATTAGLIA: Budget's on a month-to-month basis, so -- right.

THE COURT: It's important fill in the blank. Yeah. On this -- when does the budget expire?

MR. BATTAGLIA: It's month-to-month, Judge, so it's the end of April.

THE COURT: Okay. Now, let's see.

MR. BATTAGLIA: So sometime in the week of the 24th of April.

THE COURT: Let's do Friday the 28th. I know for sure I'll be here.

MR. BATTAGLIA: At what time, Judge?

THE COURT: One o'clock. One o'clock on Friday the 28th.

MR. BATTAGLIA: Very good.

THE COURT: Okay.

MR. BATTAGLIA: And I know the Court's a sophisticated Adobe user. You don't need me to mark the order up. I'm happy to do it.

THE COURT: I wouldn't call myself sophisticated, but I can get this one done.

MR. BATTAGLIA: Okay. That leaves us with the motion to revoke election.

THE COURT: Okay.

MR. BATTAGLIA: That is the plaintiffs' joint motion.

THE COURT: I will turn it over to plaintiffs.

Counsel, can you just give me a second? I want to just sign this and send it off the docketing now so that I -- you have my full attention. Okay, it is off to docketing.

MR. KIMPLER: Your Honor, Kyle Kimpler from Paul Weiss on behalf of the Connecticut plaintiffs. I'll be

handling the motion to revoke the Subchapter V election.

Your Honor, I'm sure you've read the papers. I have prepared remarks that I'd be happy to start with. If you want to start with questions, I'm happy to take your lead.

THE COURT: No, no, no. I've -- I just -- I've read everything, and I've been thinking about it quite a bit, so I'm well prepared for today. I'll be --

MR. KIMPLER: Great.

THE COURT: You can -- I'll just turn it over to you.

MR. KIMPLER: Your Honor, the issue that you have before you today, I will concede is an issue of first impression. I don't believe anybody in this courtroom has identified a case where this issue has come up. But not withstanding that, it's our view that the issue is rather straightforward and based on a plain read of the statute.

Section 1182 of the Bankruptcy Code defines the eligibility requirements to be a Subchapter V debtor and Section 1182 imposes a two-part test to be eligible. In Subsection 1(A), Congress defines the positive attributes that a debtor must have to be eligible, and those include many things. Has to be a person as defined by the Bankruptcy Code. That person has to be engaged in commercial activities. That person has to have non-contingent liquidated debts, less than $7 and a half million dollars as of the petition date, and at least 50 percent of those debts must arise from the business

activities.

Now, before I go on, I would note that the temporal limitation that we're going to spend most of our time talking about today, is not the first words you see in Subsection (A). It's buried in the middle. It's limited solely to the question of the debts.

So if we were here saying that a debtor had liquidated, for example, and was no longer engaged in commercial activities, I think there'd be a question whether it was eligible. The -- at the "as of the petition date" language is in the middle of (A), and it applies solely to the question of the debtor's debts.

Now, of course, Subparagraph (A) is expressly subject to Subparagraph (B). Subparagraph (B) applies the second of our two-part test. And it says that even if you satisfy all of the requirements of (A), you have to do something else, you have to satisfy the requirements of (B). And there you are not eligible if you are a member of a group of affiliated debtors that together, in the aggregate, hold more than $7.5 million in debts. Again, no reference there to a petition date. You're also ineligible if you're a public filer under the securities laws or you're an affiliate of the public filer.

So as we think about this two-part test that comes out of 1182(1), and we apply it to this case, there are several facts that are not in dispute today. No question that Free

Speech Systems and Alex Jones are affiliated debtors under Title 11. No question that as of today, and frankly, as of December of 2022, that they held non-contingent liquidated debts exceeding $7.5 million. And there's no question that Subparagraph (B) does not use the words "as of the petition date." On that basis, Your Honor, my clients believe that Free Speech is not an eligible Subchapter V debtor.

Now, the only argument, at least raised in the papers, is that the reference to the petition date in Subparagraph (A) applies by implication, not expressly, to Subparagraph (B); that you can take those words that you find in the middle of Paragraph (A), and you apply that to every one of the requirements in Paragraph (B). And that interpretation is wrong for at least three reasons. First, the statute doesn't say that. Nothing in the plain language of the statute says that (B) -- Subparagraph (B) is qualified by Subparagraph (A). It's actually precisely the opposite. (A) says that even if you meet the requirements of (A), you're subject to (B). That means that (A) is qualified by (B).

The argument you have -- you will hear, or in the papers anyways from the debtors, is that in fact, (B) is qualified by (A), but that is not the way the statute works. The statute says that (B) overrides (A), that you can meet all of the requirements in (A) and still be ineligible. There is no case and no canon of statutory interpretation that I'm aware

of that says the words "subject to" in one paragraph means that you take certain provisions of that and graft it onto another one. I think the more obvious interpretation is that (B) overrides (A).

The second problem with the argument advanced by the debtor is that the basic principles of statutory construction point the opposite direction. Your Honor, I'm only going to say to you today, I think hopefully, two cases. But one of the cases that I think is actually very instructive here is the Supreme Court's very recent ruling in Bartenwerfer v. Buckley, the recent decision on dischargeability of debts obtained by fraud.

And let me just take a quick detour and lay out what was going on there. You had a debtor who was co-obligor on a debt, and everybody agreed that that debt was obtained by fraud. But the debtor was an honest debtor and said, my co-obligor committed the fraud, not me, and the debt is only non-dischargeable if I am culpable.

Now, Section 523(a)(2)(A) of the Bankruptcy Code was written in the passive voice. It doesn't say who committed the fraud. It said if a fraud -- if a debt was obtained by fraud. But the debtor there said, well, don't just look at 523(a)(2)(A), Look at 523(a)(2)(B). Look at 523(a)(2)(C). These are similar provisions governing the nondischargeability of debts. And there in (B) and (C) it says it has to be

actions by the debtor. And so the debtor here said that implies the same thing in Subparagraph (A).

The Supreme Court disagreed. It says that this argument, and I'm quoting, "flips the rule that when Congress includes particular language in one section of a statute, but omits it in another, we generally take the choice to be deliberate." And the Supreme Court went on to say that, "the more likely inference is that (A) excludes debtor culpability from consideration, given that (B) and (C) expressly hinge on it."

And I think that analysis applies with full force to Section 1182. 1182(a)(1) expressly hinges on debts as of the petition date. But subsection -- I'm sorry -- Subparagraph (B) does not. And if we know anything about interpreting statutes, what the Supreme Court has told us is that that is intentional.

And I want to make one other point about the debtor's argument, a practical point. If it were true that you had to measure aggregate debts as of the petition date, that would make it very easy for debtors to avoid the application of (B).

And so let's just take an example here. Let's say that Free Speech and Alex Jones wanted to file on the same day, but they knew -- and let's say the judgments were liquidated at this point. But they knew they couldn't do that because that would run afoul. Under the debtor's interpretation, what you can do is have Free Speech file today, have Alex Jones file

tomorrow. And you can say, well, now Alex Jones couldn't be a Subchapter V in that example, but Free Speech could because you would say, no, no, no, you only look at the petition date; and on the petition date, I didn't have an affiliated debtor.

THE COURT: You agree the opposite is also true, right? That a corporation with its own board could file for bankruptcy and elect for Subchapter V and the parent, with a completely separate board, could also elect to file a bankruptcy case and that would render the first filer ineligible, unless you say they were completely -- for two completely different reasons. So the opposite is true. So how does that help?

MR. KIMPLER: I -- I'm not sure I follow, Your Honor.

THE COURT: If -- let's just say a sub files. Right? Sub has its own board.

MR. KIMPLER: Yep.

THE COURT: Files for its own reason. Parent runs into trouble. The parent files later. Right?

MR. KIMPLER: Yes.

THE COURT: Let's just say Joe's filed for a completely different reason, completely different liquidated debts, other than this. Under your analysis, Free Speech would still be rendered ineligible, right?

MR. KIMPLER: That's right.

THE COURT: Right, but that's what I'm saying. It's

the same thing. It's the flip side of what you're saying. They're both -- they both -- in other words, it works, it harms in both ways. Right? You could find yourself with a debtor who was completely intentional about the order in which it was filing. You could also harm a completely innocent filer, as well, who had nothing to do with the case.

MR. KIMPLER: But -- that's fair, Your Honor. I think the --

THE COURT: And let's just say it's -- here's -- I'll give you the pressure point that I've been thinking about.

Let's just say -- and I'll give you two different hypotheticals, just -- and I'll push the other side, I assure you. Let's just say the debtor was liquidating, okay? For liquidating 11, which is permitted under a Subchapter V. All right? At that point, they wouldn't be engaged in commercial activities after the 363, so the debtor would commit a 363 and a 363 sale, no longer engaged in business. And you're telling me that that net debtor is now rendered ineligible under Subchapter V. Right?

That's the scenario one that you're telling me. Because you're saying that the word "engaged" doesn't mean as of the petition date, it just means that they're not engaged. And you said earlier that if a debtor's not engaged, then that would render them ineligible. So a debtor who is -- sells or liquidates as contemplated under Subchapter V or engages in a

going out of business sale or decides it needs to sell a major asset and is no longer engaged in business, is no longer eligible, right?

The concern that I have is that what you're saying is that someone can float in and out of Subchapter V for reasons that may be intentional, but may not also be intentional. And that's what concerns me.

MR. KIMPLER: So on the liquidation point, I think that Congress has very different concerns at mind so -- in mind. So for example --

THE COURT: Where are you getting that from?

MR. LOHAN: -- in your example --

THE COURT: Where are you getting that from in the text?

MR. KIMPLER: I'm getting it because of the purpose of Subchapter V is to essentially avoid --

THE COURT: Where are you getting the purpose of Subchapter V in the text?

MR. KIMPLER: In the statute, that there's no absolute priority rule. So the benefit -- the key benefit of Subchapter V is that it -- an owner of a small business can retain its equity ownership.

THE COURT: But that's for different reasons, right? Because that debtor is now going to be working for three to five years consent -- theoretically, they're under the

consensual plan or on a non-consensual basis for three to five years. So the debtor can continue to work and is motivated to continue to work for its creditors for the next three to five years. It's incentivized because it will be able to keep -- that's not telling me what the purpose of Subchapter V is.

MR. KIMPLER: What I was implying, Your Honor, is that a liquidating sale, a quick 363 sale, you don't need Subchapter V to do that.

THE COURT: But you can do it. You can do it under Subchapter V.

MR. KIMPLER: You can, but the -- in my view, the primary benefit of Subchapter V is to retain your equity ownership. And if you're going to do a 363 sale --

THE COURT: Even under a consensual plan?

MR. KIMPLER: -- there's no -- I'm sorry?

THE COURT: Why would you need -- under a consensual plan, you wouldn't need the absolute priority rule. You wouldn't need to cramdown the plan on anyone.

MR. KIMPLER: You wouldn't need to. If you're selling all of the assets in a 363 sale, Your Honor, you would not care about retention of the equity interest.

THE COURT: Right. But you would still be rendered ineligible under Subchapter V. Maybe you didn't want to have a creditors' committee. Maybe you just wanted to get in and out really fast without -- maybe you didn't want to file a

disclosure statement. The costs could be associated, could be tremendous. And really, why do debtors choose to file for bankruptcy? You don't know a particular case.

It's the floating in and out that concerns me about this position. I've got concerns about their position as well, but that's what concerns me. It's the floating in and out, like it could happen at any point.

MR. KIMPLER: Right. I -- listen, I agree, Your Honor, that you never can tell with absolute certainty the purpose somebody files for bankruptcy or chooses one section or the other. What we know is that in determining eligibility here, essentially the key feature is the quantum of debt. And Congress has said when you get over that level, you're just not entitled to those expedient processes.

So to me, the possibility that you might float out is subject to an ongoing, at all times, debt limitation. When the debts exceed $7 and a half million, Congress has said creditors are entitled to different rights.

THE COURT: Talk to me. I know they're going to mention the rule, 1020(a), right?

MR. KIMPLER: Yes.

THE COURT: What's your argument on that?

MR. KIMPLER: So the first thing I would say, Your Honor, is that if you agree with us on our interpretation of 1182, then I believe this argument's a bit of a red herring in

the sense that you can independently, if you conclude they're ineligible, you can revoke their Subchapter V election.

We cited a case in our papers. This will be the second, and I promise the only other case I'll cite to you, National Small Business Alliance. That's out of the D.C. --

THE COURT: You can cite as many cases as you want, Counselor.

MR. KIMPLER: -- bankruptcy last year.

THE COURT: Right.

MR. KIMPLER: But there, the court revoked a Subchapter V election irrespective of a motion filed under 1020.

The second thing I would say, Your Honor, is that I don't think anybody here seriously disputes, we could not have raised this argument in compliance with Rule 1020. Rule 1020 said we would have had to have filed the objection by October 7th of 2022.

THE COURT: But maybe that's what Congress means, is that you're going to have finality one way or the other, and we shouldn't be -- maybe (B) and (A) do -- are read together and Rule 1020(a) says this is the last date that we stopped checking. Right?

MR. KIMPLER: I think to get to that, I think you would first have to conclude that --

THE COURT: (B) and (A).

MR. KIMPLER: (A) governs (B). And I think the statutory analysis that I started with doesn't permit that. I think once you get comfortable that (B) stands on its own, that it's not qualified by (A), I don't know where you would moor that argument but there is some necessity to check as of the petition date that is only found in (A).

THE COURT: As of the petition date, yeah. I got it. That makes sense.

MR. KIMPLER: So we -- the disqualifying triggering event here did not happen until December. So we could not have complied with Rule 1020. But if you then went on to an excusable neglect analysis --

THE COURT: Where do you find excusable neglect in the statute? We -- we're doing statutory construction. Where do you find that standard?

MR. KIMPLER: In Rule 9006, allows the Court -- just because the only issue here is Rule 1020 --

THE COURT: Right.

MR. KIMPLER: -- Rule 1020 can be extended for excusable neglect under Rule 9006.

THE COURT: Okay.

MR. KIMPLER: If we're going through that analysis, Your Honor, I think the first thing you have to ask is what is the delay we're talking about? I don't think it's appropriate to say that the delay is from October when the first deadline

was until February 15th when we filed our motion.

I would argue that the appropriate delay is from December of 2022 until February of 2023, a period of about 65, 70 days. And I would make a couple of points. We conceivably could have filed this motion on December 3rd, 2022, the day after Alex Jones filed his individual case. It would have required me to be a lot smarter and act a lot faster. But one reason that that wasn't done, Your Honor, is because the judgments were not entered until December 22nd, and there could have been an argument that the claims were contingent. So when I think about the delay for purposes of excusable neglect, I start December 22nd to February 15th, a period of about a month and a half.

I would also say that I think it was appropriate for us to wait to see the initial Jones schedules, where Jones, for the very first time and different from his petition, admitted that our claims were liquidated. Once those schedules were filed on February 14th, and we had known that that was the date from prior hearings before you; we filed our motion the very next day. We thought at that point we had the record to come into this Court and say that this was inappropriate.

So I think that the families acted expeditiously. And I would say if you go through an excusable neglect standard, many courts, although I don't believe the Fifth Circuit has adopted this definitively, say that the most

important of the four standards is whether the delay was outside of the movant's control. Again, here, we could not have moved before December.

When you look at the prejudice that is caused to the debtor, I'm aware of none. I'm aware of no progress that was made in this case between December 22nd of 2022 and February 15th of 2023.

And the other thing I would say about prejudice, Your Honor, is maybe we should just zoom out for one second. This is a Subchapter V case where the sole owner is in a Chapter 11 case. The notion that we need to expedite and go forward with a Subchapter V plan so that the equity of that business can be held by a Chapter 11 debtor who hasn't filed a plan or completed his schedules yet, I think also cuts against any notion that there's really prejudice to the debtor here.

So, Your Honor, our view is that the motion was timely; that whether or not the motion was timely, you have ample authority to revoke the election, especially if you agree with our statutory interpretation.

THE COURT: Where does the Court have the authority to -- where is it in this Code that I have the authority to do what you're asking?

MR. KIMPLER: So I start with 1182(1)(B) where it says very clearly a debtor may not be these categories. I think you can then go to 105 to say if there is a clear litmus

test about who is and who is not eligible, there must be a remedy to revoke that.

THE COURT: What do you think happens? I know this is a question that both of you are wondering. What -- if I do revoke, then what happens to the case?

MR. KIMPLER: I -- the case should continue as a regular Chapter 11 case.

THE COURT: Where did -- where is that in the Code?

MR. KIMPLER: It would be -- again, if you revoke the election, it would just be -- you'd be left -- I mean, because Subchapter V is obviously a subchapter of Chapter 11..

THE COURT: In other words, the debtor filed on the petition that it seeks to elect and only the debtor can elect. So if I revoke, then why does that put the debtor on -- in a regular 11? Right?

In other words, if a debtor went in thinking -- let's just put innocent debtor, you know. I'm not saying this one isn't. What I'm saying is a debtor with no litigation. It's just a debt, a pure debt issue where the parent files and it's part of (audio interference).

Debtor elects to proceed under Subchapter V and wanted to -- the owner wanted to retain the equity in the business. Right? Now rendered ineligible, now it's now subject to a completely different standard with no way out. Right? Or unless it -- the debtor would -- then it's up to the

debtor to then file a motion to dismiss his own case.

But where do -- where is the transition happen to an 11? Where do -- where is it that the petition to proceed under an 11 Sub V, revoked means automatically appoint a committee, render someone to disclosure statements? Where is that in the Code, or in the Rules?

MR. KIMPLER: So it's not expressly in the Code. And now I'm going to break my rule and cite a couple of other cases.

THE COURT: No, no, no. I want you to cite -- I'm wrestling with these issues and that's why I'm asking.

MR. KIMPLER: So there are -- this issue has come up on other elements of Sub -- sorry -- Subparagraph (B), specifically the "being affiliate of" a securities filing. We cited to you the case In re Phenom Marketing [sic] and In re Serendipity Labs. In both of those cases, and as well as the National Small Business Alliance case I cited earlier, in all three of those cases, the court grappled with this issue. And I think frankly, the court took a practical view in each instance to say, what would be the effects of -- you're right. I think the sole statutory basis would be to just dismiss the case or maybe convert it. And the courts there said that's too disruptive, that could be prejudicial to the creditors, it could be value destructive.

And that informed our view here in the relief we were

seeking. Again, we're not trying to be a bull in the China shop and destructive. We wanted to have the case continue in Chapter 11. But the honest answer to your question, Your Honor, is that there is no specific provision of Title 11 that governs this.

There is a provision that says who is not eligible. There is a rule that clearly contemplates that you can object to the election. And there is Rule -- I'm sorry -- Section 105. And there are at least three courts that have looked at this and concluded that the appropriate remedy is to revoke the election and move forward as a regular Chapter 11.

THE COURT: Okay.

MR. KIMPLER: Your Honor, I -- the last thing I'd like to just emphasize here is that revoking the election in this case I think is particularly important. This is not a typical Subchapter V case. This is not the ma and pa pizza shop. This is a debtor with 1.4 billion in liabilities, 200 times the statutory limit. To the extent Congress enacted Subchapter V to permit quick expedient reorganizations, that has already failed here. We are eight months in the case.

And what we heard on Friday night -- I won't beat my drum again -- tells us that we have significant concerns about who is in charge of this debtor, whether they take their fiduciary duties as a debtor in possession seriously. I don't think Free Speech is entitled, as a statutory matter, to the

benefits of Subchapter V, and I certainly don't think they deserve it.

I think the creditors of this debtor are entitled to the full suite of protections that Chapter 11 offers. That includes the appointment of an official creditors' committee that can look into the facts that we have just recently learned. It includes the ability to appoint a true Chapter 11 trustee. It includes the ability to get a disclosure statement and adequate disclosures, and it includes critical protections under Section 1129, including the absolute priority rule.

Those requirements of 1129 that apply in a regular Chapter 11 and don't apply in a Subchapter V, those are critical because it's Congress constantly rebalancing the rights of debtor and creditors. And what Congress has said -- and this ties back to where we started, 1182(1)(B) -- when you are part of an affiliated group of debtors with more than $7 and a half million of liabilities, Congress has decided that that balance of rights, that frankly tilts towards the debtor in a Subchapter V case, no longer is appropriate, and that you need the balance that is provided more fully in Section 1129 of the Bankruptcy Code.

So, Your Honor, I think that this was an important motion when we filed it in February. I think it's even more important today.

THE COURT: Thank you very much.

MR. KIMPLER: Thank you.

THE COURT: Let me just, yeah. What I would ask is -- come on up, Ms. Hardy. Anyone in support of the motion, I would ask to go first and then we'll go to parties who oppose.

MS. HARDY: Thank you, Your Honor. Again, Jennifer Hardy of Willkie Farr on behalf of the Texas plaintiffs.

Your Honor, Mr. Kimpler very ably covered each of our joint arguments, and I certainly endorse his words and I won't -- will not repeat each of them or his arguments. But, you know, one thing that you had discussed with him really struck me, and that's the argument about finality. And as bankruptcy petitioner -- practitioners, the bench and bar, that's certainly a concept that we're used to.

In order to allow the process to proceed in an expeditious and orderly way, we have bar dates so that creditors, you know, have a designated time to file claims, and if not, their rights are prejudiced. But at the same time, we do have exceptions to those rules. We have Rule 9006(b), which specifically sets forth that in certain instances where there is excusable neglect, that finality that we typically seek can be reopened.

The Supreme Court has clearly articulated that the excusable neglect determination is at bottom, an equitable one, taking account of all relevant circumstances surrounding the party's emission -- omission. And that's In re Pioneer,

507 U.S. 380.

Your Honor, as Mr. Kimpler ably noted, here we have a debtor that would not be entitled to file a Sub V case today, regardless of the affiliated debtor. In fact, a jury in Texas awarded certain plaintiffs damages in excess of $45 million just a week after the FSS case was filed.

Here we have movants who were literally unable to file, the plaintiffs. We were literally unable to file a motion to revoke by the deadline set forth in B.R. 1020 because the circumstances that gave rise to the revocation did not arise until two months after the deadline. And that was a circumstance entirely in Mr. Jones's control, not the plaintiffs', the date of the filing of his petition.

So when you examine the Supreme Court factors for excusable neglect, including as interpreted by the Fifth Circuit, each and every excusable neglect factor weighs in favor of the plaintiffs. Factor one is danger of prejudice to the debtor. Conversion will only serve the goal of greater judicial efficiency in these cases. It would allow for jointly-administered cases with a joint Chapter 11 plan, which could be mediated collectively instead of piecemeal.

And the debtors' assertion -- only assertion that it would be -- the prejudice would revolve around a potential for increased fees if the UCC is appointed and U.S. Trustee fees must be paid. However, the Fifth Circuit recently held in In

re CJ Holdings, 27 F.4th 1105, that additional litigation costs and other legal fees were not enough to constitute prejudice to the debtor because if so, each excusable neglect case would fail solely on those grounds.

The length of the delay and the potential impact on these proceedings were also addressed by Mr. Kimpler. The plaintiffs filed their motion as promptly as possible, giving the timing of the Jones case. This was not a case of many months or years of delay. And in fact, we're at the beginning of the plan mediation process and we're waiting for more robust disclosure from the debtor before proceeding further on that path. So therefore, the revocation delay -- revocation motion will not delay the plan process.

The third factor, the reason for the delay, including whether it was in the control of the movant, obviously weighs in favor of the plaintiffs.

The fourth factor, good faith: The plaintiffs, as Mr. Kimpler noted, are acting to secure more robust protections for creditors that are available in traditional Chapter 11. Certainly a matter of good faith.

So unless you have any specific questions for me, Your Honor --

THE COURT: No. No, I appreciate it.

MS. HARDY: Thank you.

THE COURT: Thank you.

MS. HARDY: We request obviously the revocation of the chapter -- of the Sub V.

THE COURT: Thank you. Good afternoon.

MR. NGUYEN: Good afternoon, Your Honor. Ha Nguyen for the U.S. Trustee. Your Honor, this is truly an issue of first impression, and I can say that with confidence because we went around asking our colleagues around the country to see whether this issue has come up before. We've looked for guidance that might help guide this Court in making a determination. We -- unfortunately, Your Honor, we did not find any of those guidance.

So we are here today to give the Court our position on this. And when I said -- when we read 1182, and literally when I said there's not -- when I say "reading," it's not our interpretation of 1182. What we are doing is we're actually reading the text of 1182. And looking at subpart (a) and subpart (b), there's just not -- you can't read "as of the petition date" in subpart (b). I know Your Honor is struggling with the ramifications of floating in and out. But in terms of reading the statute and applying statutory construction, sometimes ramification happens and we have to interpret the text as it's written by Congress.

So, Your Honor, I will be reading --

THE COURT: I think we should always do that, Mr. Nguyen.

MR. NGUYEN: I agree, Your Honor.

THE COURT: And I know you agree with me.

MR. NGUYEN: I agree, Your Honor. And in our short response, we've read the statute and we made a judgment call, and we believe the correct reading of 1182 is on the plaintiffs' side in terms of when you should apply --

THE COURT: Here's a question for all of -- for everyone on that side. I'm not sure the standard is petition date either. I think the standard is statement of election date. So, if one makes a statement of election on the petition date, that's the date that governs. If it's a standard on -- debtor could always amend its petition.

MR. NGUYEN: Correct.

THE COURT: And it's amended, right? So you're not just looking petition date. You're looking at statement of election date. And that's what seems to be triggered on 1020, right? That's what triggers 1020. That's why 1020 can go after that. So why isn't that the date?

MR. NGUYEN: Your Honor, it's because the statute says as of the petition date.

THE COURT: For money. You've got to qualify. You have to have that debt on the petition that date, right?

MR. NGUYEN: That's correct, Your Honor.

THE COURT: But it's made on the statement of election. So, theoretically, the petition date is always going

to work on that, because -- and then you have 30 days to check, or -- the later of 30 dates or after a 341 meeting, unless the debtor amends to elect Subchapter V on a different date. You still have to satisfy the debt as of the petition date.

MR. NGUYEN: That's true for subpart (a).

THE COURT: So you're saying -- so you're in -- okay. So let me throw the hypothetical at you then. Let's just say an unaffiliated -- no, an affiliate, one who owns 20 percent more files for personal bankruptcy, has nothing to do with the debt. And let's just say this debtor is in a Subchapter V, in the middle of plan confirmation. You're saying it just goes poof, debtor's rendered ineligible in an 11 and now has to file a new plan and disclosure statement, has to now get a creditors' committee, and now the case gets dragged on for the next six months. That's what you're saying happens.

MR. NGUYEN: That --

THE COURT: You're saying the code -- that's what Congress intended.

MR. NGUYEN: Your Honor, that is the plain reading of --

THE COURT: I'm asking you to tell me where the plain reading says that.

MR. NGUYEN: Your Honor, it's who may be a debtor.

THE COURT: Right.

MR. NGUYEN: To --

THE COURT: You're going to say, see, if you read it all the way together, Lopez, then you never have to deal with this question because every time -- there's just the 30-day challenge period, and that's what Congress did, right? Just like a bar date. Sometimes it --

MR. NGUYEN: Judge, but the 30-day challenge period, it's for subpart (a).

THE COURT: Where do you see that in 1020?

MR. NGUYEN: In --

THE COURT: I'm asking you where the language in 1020(a) says that.

MR. NGUYEN: Your Honor, it's just applying Rule 1020 factfully. There is no way for this --

THE COURT: But you're weaving in and out of practically, unless you say what the code said.

MR. NGUYEN: Understood, Your Honor, and --

THE COURT: Mr. Battaglia, I've got questions for you, too. This is not going to be a free ride for anyone. I'm just pushing --

MR. BATTAGLIA: Little beads of sweat, Your Honor.

THE COURT: We're sticking with the text, and that's the textualist's analysis. And I'm a big textualist, right?

MR. BATTAGLIA: Correct.

THE COURT: As every bankruptcy judge is. Let's just stick with the text. Tell me where it says it.

MR. NGUYEN: Your Honor, just the situation that we have, Rule 1020 just can't apply to subpart (b) in this particular situation.

THE COURT: Then why would there be rules that apply to when a statement -- why --

MR. NGUYEN: Your Honor, I don't think there's a --

THE COURT: You're saying that 1020(a) is just essentially rendered meaningless because, at any point an affiliate files, then 1020(a) is meaningless.

MR. NGUYEN: Your Honor, that's -- 1020(a) applies to subpart (a) of the petition date --

THE COURT: Tell me where it says that in the text.

MR. NGUYEN: It doesn't render it meaningless because you --

THE COURT: No, no. Tell me where it says it only applies to subpart (a).

MR. NGUYEN: Your Honor, I will stipulate it doesn't say that, but in terms of applying --

THE COURT: Say it in (b) or part (c)?

MR. NGUYEN: I'm sorry, Your Honor?

THE COURT: Doesn't say it in part (b) or part (c), right?

MR. NGUYEN: It doesn't. And --

THE COURT: What is the purpose of Bankruptcy Rule 1020 then?

MR. NGUYEN: It's to evaluate the debtor at -- when the debtor files a bankruptcy case, to evaluate the debt as of the petition date. There are cases where we -- where creditors do object to a debtor's debt.

THE COURT: Uh-huh.

MR. NGUYEN: But 1020, you can't really apply it to subpart (b) because it's talking about an affiliate debtor's debt. So, if you apply 1020 in a way that -- only within that 30 days, you're actually rendering -- you're doing the opposite. You're rendering subpart (b) meaningless by --

THE COURT: Are you familiar -- you deal with consumer cases. Are you familiar with any other chapter of the Bankruptcy Code where a debtor by a post-petition act can lose eligibility?

MR. NGUYEN: No, Your Honor. This is -- it's based on the definition under 1182, and that's how we're reading it.

THE COURT: Understood.

MR. NGUYEN: Your Honor, I think 1020 really applies to subpart (b) -- subpart (a), and that's our position. But then the question is should the Court consider a motion. Because there's really no rule that tells you when to actually -- when is the deadline to object to a designation when an affiliate debtor comes in.

I think the question comes down to a question of equity now, because there's really no rule that applies to this

very situation. And I think the Court, in determining whether to revoke the designation or allow the debtor to remain in Subchapter V or even hear the motion at all is a question of equity. And it's a question of whether these plaintiffs sat on their rights, based on how -- the chronicle of --

THE COURT: How do you feel about a month and a half?

MR. NGUYEN: Your Honor, I think it -- I don't --

THE COURT: Sophisticated counsel, right?

MR. NGUYEN: Understood, Your Honor. But I don't believe they slept on their rights. I think --

THE COURT: You think waiting on the debtor to file a schedule to then confirm what a liquidated debt is --

MR. NGUYEN: It's -- there was -- I mean, the debtors have --

THE COURT: It's got to work for everyone now, right?

MR. NGUYEN: Understood. The debtors can always schedule their claims as contingent based on appeals. There are arguments for it, and these particular plaintiffs, I don't believe, sat on their rights, and they brought their appropriate motion at the appropriate time.

THE COURT: Okay.

MR. NGUYEN: Thank you, Your Honor.

THE COURT: Thank you.

Now, if anyone on the line wishes to address the Court, please hit "five star" if you do, in support of the

motion.

Hold on. I muted a (212) line. I don't know whether you to wish to address the Court in connection with the motion, and I apologize if I didn't see you earlier. If not, please put your phone on mute.

MS. PORTER: Good afternoon, Your Honor. I think that's me. This is Katherine Porter from the Committee.

THE COURT: Ah, yes.

MR. PORTER: I had raised my hand -- good afternoon. I had my raised my hand to speak earlier on the question of the disclosures, not on this topic, so --

THE COURT: Ah. Ms. Porter, I --

MS. PORTER: -- we don't have any (audio interference) --

THE COURT: I apologize. I apologize. And please feel free to wave, and -- it's been done before, and I don't take offense to it. I apologize.

Okay. Mr. Battaglia, your turn.

MR. BATTAGLIA: Put me in the hot box to start --

THE COURT: No.

MR. BATTAGLIA: -- or can I get some words in edgewise first?

THE COURT: Absolutely. Just get close to the mic. I want to make sure we can hear you.

MR. BATTAGLIA: Yes, sir. Your Honor, let me start

with the facts that are undisputed. Free Speech filed its voluntary petition on July 29th of '22, properly designated its filing as a small business debtor under Subchapter V on its voluntary petition. There's no dispute that, on the petition date, Free Speech met the definition of a debtor under 1182; that is it was a person; it was engaged in commercial business activities; the activity did not include the business of owning single-asset real estate; had aggregate debts that met the $7.5 million cap, excluding debts to insiders, and 50 percent or more of those debts arose from the debtor's business activities.

The 341 meeting was concluded in this case on September 7th, 2022, and Free Speech has never amended its, quote, "statement," which is a word that seems to be used in the statute and rules, although not so much on the petition itself. But they've never amended its sub (b) designation.

The movants now seek to revoke that designation, and we think that the motion fails for at least two reasons. And I'm going to start in reverse order, save the more esoteric, statutory interpretation stuff for -- let my brain continue to process.

But the first is, it's just untimely. And yes, Rule 1020 says what it says, and it sets a deadline. And what the plaintiffs -- what the movants are telling you here is we don't need no stinking rules. Those rules don't apply to us.

The rules do apply. And Rule 9006 gives them a -- the ability to do something about the deadline that's set in 1020. It says that you can -- even after the deadline has expired -- you can file a motion under excusable neglect.

Well, we stand here today, probably almost a month after I filed my original response for Free Speech raising this issue, and they've still not filed a motion under 9006. There's no motion here asking you to extend the deadline. They've argued about it, and they certainly, in their reply, talk about it, even though they submit to you that it absolutely does not apply to them, for some reason that's unclear to me.

THE COURT: I think what they're arguing is that 9006 -- excuse me, 1020, could never really have applied because Jones filed well after any conceivable period to object to the Free Speech. What's your response to that?

MR. BATTAGLIA: They should have filed a motion under 9006 and raised that as a basis for excusable neglect, but they haven't done so. They don't get to ignore the rules. And I would agree if their interpretation of the statute is appropriate, and I don't think that it is, that they might have had a basis to file a 9006 motion.

THE COURT: What about their point it's going to lead to potential -- I think "abuse" is probably the right word. Mr. Kimpler would -- where someone -- strategic debtor is going

to time it, right, and they're going to say, well, we want the first debtor in Sub V and we want the second debtor in 11. Just wait until after the challenge period and then file the affiliate.

MR. BATTAGLIA: Come before this Court as quickly as possible and file a motion to enlarge the time because the predicate act did not occur within the 1020 time limits. That's what I would have done. That's what the rules contemplate being done. That's not what happened here.

And notwithstanding Mr. Kimpler's argument that, well, yes, the judgments had come back -- the verdicts had come back, but the judgments weren't entered, there's ample case law that says that you don't need the judgment to be entered in order for a debt to no longer be contingent and unliquidated.

And these are -- you're going to hear me say it again -- capable, sophisticated law firms. That case law is really not seriously disputed out there, that -- and I -- probably reflected in the fact that Jones didn't file a Subchapter V case on December 2nd. He filed a Chapter 11 case. Because I think they knew it wouldn't have withstood scrutiny under the case law.

So they knew as of December 2nd, not December 22nd. And we're talking about groups of movants here that are represented by no fewer than 20 lawyers. A lot of them are sitting here in the courtroom today. Three major international

law firms have stepped in to represent, at various times, the movants. This wouldn't have been hard. 75 days they waited to come before you. And then they didn't even have the courtesy to ask you for relief under 9006 asking for an enlargement of time.

So this is untimely. It's just flat untimely. And on that basis alone, it should be denied.

THE COURT: But where's the harm?

MR. BATTAGLIA: Where's the harm?

THE COURT: Uh-huh.

MR. BATTAGLIA: I guess if we were here under a 9006 motion, we could have that conversation. But we're not. Where's the harm? Oh, good -- the harm is multiple. A debtor elects to file under a certain chapter. And that, under the -- I don't have cases to cite you because it's black letter law. The debtor is entitled some deference. The debtor's election and choice of remedies is always entitled some deference as a starting point.

Number two, the benefits of a Subchapter V are multiple. Yes, the absence of the absolute priority is one of them. And maybe it's the most important. Maybe it's not, as you say. I've had plenty of debtors. The idea that we don't have a committee. The idea that we have a neutral whose -- comes in and whose sole purpose or one of their primary purposes is to try to negotiate between the parties is another.

The fact that you don't have U.S. Trustee's fees. And here, we're talking about 60-, $70,000 a quarter in U.S. Trustee's fees. All of those are huge benefits to a debtor. I don't have to file a disclosure statement. I don't have to have the interval between the disclosure statement and the plan. I don't have to even ballot the plan. The proof elements are substantially different.

THE COURT: But what they're saying is no one -- 60, 75 days. But nothing has really happened between then, right? This case has been stagnant because the parties have been in mediation. What's the real harm?

MR. BATTAGLIA: Well, the debtor's filed a plan. So if we're not going to get to mediation, let's get to plan confirmation. I'd rather mediate. As you'll recall from our hearings, Judge, the last time -- I think it was the last time we were here -- I was prepared to file my plan of reorganization and you graciously offered me an extension. And I thought maybe it would be best to keep peace in the land not to file the plan. They immediately responded by filing this motion. So, obviously, peace in the land is not that important. And so we filed our plan.

I'd been holding off because I thought we were mediating. And I don't want to -- I'm not going to go into the mediation other than to say that any suggestion that the delay is entirely based on either my debtor or Mr. Jones' estate is

wrong. The mediation hasn't progressed for a multitude of reasons. I'm not going into them. I'm not going to go into them.

THE COURT: Let's just skip it, because I don't know what's happening --

MR. BATTAGLIA: I understand.

THE COURT: -- nor am I --

MR. BATTAGLIA: The suggestion was made, and I simply want to refute it.

So 75 days, with the level of sophistication, the number of bodies that they can throw at things, is not excusable neglect. They should have brought this issue to you sooner.

So we've never suggested that there isn't the ability to challenge an election or a statement. But Rule 1020 clearly contemplates that. And as they graciously admit, there's no case law on point on the issues. They seem to rely on National Small Business Clients --

THE COURT: Everyone keeps reminding me of that point. I appreciate it.

MR. BATTAGLIA: Yeah. I wish there -- I think I wish there was.

THE COURT: To be honest with you -- and I'm just speaking for me -- I find reasoning far more important than the fact that -- there could be three cases, but the reasoning in

those cases -- and I'm -- that's not to say that the reasoning in these cases isn't incredibly important, but the fact that there's not a case is fine with me. And the fact that there could be three cases addressing it could be fine with me. It just depends on the reasoning in these cases. And clearly these judges who have written on these issues, or issues that are ancillary to it, really took a lot of time, and I appreciate it.

MR. BATTAGLIA: They did. And they had different cases. And there are a number of holes. I think we've all been around Subchapter V long enough to recognize some of them in the way the statute was drafted. For example, the debtor has the sole authority to file a plan of reorganization. Mr. Martin and I confronted this issue in a case in San Antonio not too terribly long ago. And the debtor's dispossessed. The debtor's removed. No one else can file a plan.

Where do we go? That's a road that doesn't seem to end. Well, National Small Business, that's exactly what was involved there. The debtor had been dispossessed. They'd filed five amended plans of reorganization. Confirmation was denied. The Court was stuck on a road to nowhere.

And so the Court didn't revoke under any definition of 1182. It revoked under 105. And it revoked for a variety of reasons that were specific to the facts of that case.

THE COURT: Do you think I have authority under 105

to revoke?

MR. BATTAGLIA: I think 105 is a refuge for people who don't have any statutory case authority.

THE COURT: Appreciate that. But answer my question. Do you think I have the authority to revoke under 105?

MR. BATTAGLIA: I think it's a rather broad interpretation, particularly when you look at the statute. I mean, I hate to suggest that you have any limitations on your power under 105. I think the Courts have dealt with it. And I'm not prepared to address that more specifically on than that, Judge. I wish I could, but there's only so much my brain can handle at one time.

THE COURT: I guess that's my job, huh?

MR. BATTAGLIA: Yes, sir.

THE COURT: Okay.

MR. BATTAGLIA: So -- and when we look at the other two cases that they've cited, Serendipity and Phenomenon Marketing, those were timely filed under 1020 objections to the election. They didn't involve any of the issues that are before the Court here today. It was simply that this is an affiliated reporting company, and therefore it's ineligible under -- I guess it's (c) and --

THE COURT: What about the textual analysis?

MR. BATTAGLIA: Well, let's get to that. So I think that everybody has told you the language of the statute is

neither vague nor ambiguous. Okay? So we're all sitting here saying here you go, Judge. It is a question of statutory construction and interpretation. And I think that they have ignored certain rules that we're to abide by, and that the Court is instructed by in the Supreme Court. And you know, they're cited here in my papers, that what the Court is supposed to do is give meaning to all the words of a statute, not to isolate words and remove them. I think one Supreme Court case calls it the "blue pencil rule." You don't get to strike out the stuff that's not good for you.

They suggest to you that -- I'm just going to call them subsections (a) and (b), that subsections (a) and (b) are ships passing in the night. Under their interpretation, if two affiliated debtors have debts less than seven and a half million dollars at any time, they don't need to meet any of the requirements under subsection (a). They don't need to be engaged in commercial activities. They can be single-asset real estate owners. And the majority of their debts need not arise from business activity.

In other words, what they want you to do is keep all of the other requirements under (a), but just get rid of that little temporal phrase in there, "as of the petition date." Just get rid of that. Everything else either they want to supplant it, or alternatively they're telling you that (b) applies without (a), and that can't be, because it says

"subject to" are the first three words of the section. And at the end of (a) it says "and." They are clearly conjoined. There's no disjunctive here.

And what (b) does is it simply modifies the debt limitation to say include the debts of the affiliate. It doesn't strike "as of the petition date." It just doesn't. And I don't know how they get around just writing out words that are inconvenient to them, but that's what they've chosen to do.

THE COURT: But aren't they really arguing that you're looking at it backwards, right? That (b) can happen at any time, and that (a) -- and that the subject of Paragraph (b) means that (b) can show up at any given time, right? Something could happen post-petition that could affect (a). And so, if a debtor -- a parent files or an affiliate files, then the debtor's rendered ineligible under Subchapter V and I have the power to revoke using 105.

MR. BATTAGLIA: Under (a) the debts -- the valid non-contingent, unliquidated debts can change, and do change. And in fact, in one of the cases -- I think it's the Parking Management case, the debtor filed bankruptcy. It had a PPP loan that hadn't yet been forgiven, and immediately rejected multiple leases. And the Court said, you know, we're just opening up eligibility determination to post-petition events, even if deemed to apply retroactively, is contrary to the

purpose and spirit of Subchapter V and could nullify the very benefits it is intended to convey.

THE COURT: That was the debtor --

MR. BATTAGLIA: So why is that any different? An affiliate files versus a debt becomes non-contingent?

THE COURT: Because the debt is fixed as of the petition date, right? And at the time that it was filed, I think they would say. I think Mr. Kimpler would tell me to -- you know, let's focus on engage. There is a bunch of other things that aren't subject to the petition date, and he thinks that at any point, even (a) could -- something could render a debtor ineligible under (a) as well.

MR. BATTAGLIA: Well, I think that if the definition of "debtor" includes all of the elements, engaged in business, not owning single-asset real estate, then it has to be applied as of the petition date.

THE COURT: What's your thought about the hypothetical that I gave the other side, about first file -- debtor files a Subchapter V case, has its own board, own management, made the decision to file, and then a subsequent parent files for debt unrelated? Do you think that that renders the debtor ineligible, the first filer?

MR. BATTAGLIA: No, I don't. I don't think it renders the debtor ineligible. I think that each debtor has to be looked at independently. And yes, the Court should

consider, if on the date of filing or if on the petition date the affiliate debts would appropriately be included and would increase the debtor above the seven and a half million dollar eligibility cap. And that wasn't true when FSS filed. And nobody's alleged otherwise.

THE COURT: But let's say I have the power to do it under 105. Why shouldn't I revoke? Why shouldn't I revoke the election of the Subchapter V debtor at this time, in light of everything that's transpired -- or not transpired during this case? This case has been going on for quite some time. And I got it, the parties have been in mediation. I think the families would tell me -- or the plaintiffs, I should say, would tell me it's all in the best interest. You know, we've got disclosure issues and we have issues that are -- that have not yet been fully addressed. Why don't we get a committee on board and deal with it?

MR. BATTAGLIA: Well, I think the first thing is -- that the Court has to consider, and the plaintiffs overlook this, movants overlook this regularly, is they aren't the only creditors of Free Speech Systems. Yes, at a billion-four --

THE COURT: But a big one.

MR. BATTAGLIA: A billion-four, if that number is meaningful, then -- I mean, I understand what the judgments are. I'm not going to -- they are what they are. But I assure you, to a creditor that's owed $100,000 or $50,000, that's real

money, too. And it's important to them. And by somehow revoking under 105, if the Court was inclined to do so, you've just handed complete control of this case over to plaintiffs, to the detriment of the other creditors of the case.

I mean, people don't like Mr. Lemmon's client and they think that his --

THE COURT: But if there was an unsecured creditors' committee, how could you really say that we turned it over to the detriment?

MR. BATTAGLIA: Well, there's an Unsecured Creditors' Committee in Mr. Jones' case, and it's entirely populated by plaintiffs.

THE COURT: Now we're dealing with hypotheticals.

MR. BATTAGLIA: I mean -- who would swamp the committee, who would control -- control isn't just by committee. It's by confirmation standards. They'd have a blocking -- complete blocking position. Nobody could ever confirm a plan over their opposition.

And the other prejudice, of course, is the cost, as there would be meaningful increase in cost. And this estate is already in a position where it's borne, you know, close to three quarters of a million dollars in professional and restructuring fees, and you know, is that the push that kills the goose that lays the golden egg here?

Is there a case to continue? And look, I understand

the emotions of this. And I've been careful never to comment before this Court on any of those attributes from the movants' perspective or from my client's perspective. Because I'm a bankruptcy lawyer. I deal in money. I deal in restructuring and in terms and in finances.

And that's all I have the ability to control. I don't have the ability to restore anybody to a position prior. I don't have the ability to erase what's happened. All I have is money. And if -- that's what this case is about, and that's what I understand, and have always understood bankruptcy to be about is paying creditors, then I think we end up not doing that with any of them. I think this case collapses under its own weight. And maybe that's the goal. I don't know.

So prejudice, Judge? I think that's the prejudice. And I think it's extreme.

I think -- let me just address one more thing. The Bartenwerfer case, and I feel so sorry for the debtor there, having that name. And I've always thought Battaglia could be difficult, but Bartenwerfer. But you know, the idea that that case is instructive here, dealing with 523(a)(2)(A), (B), and (C), these are different statutes. They are each a different basis to deny dischargability of a specific debt. And they are in the disjunctive.

And so the fact that the first one says "procured by fraud" without reflection on who is the fraudster, and the next

ones talk about "by the debtor" doesn't instruct here at all. That's not the case with the statute that we're dealing with here. We've got a statute that says "subject to" and has a conjunctive between the two -- the (a) and (b) sections.

I think another thing that might be instructive is the definition of the word "debtor" in 101. Because Section 101 says that a debtor is a person concerning which a case under this title has been commenced. Seems to instruct that we should look at the dates.

So, Your Honor, we think that, under all of the circumstances here, that the correct, plain language interpretation of the statute is to read (a) and (b) in the conjunctive. And I think the rational interpretation is that (b) simply adds to the eligibility dollar cap by including the amount owed to an affiliate debtor on the petition date or the statement date if you choose.

I think that's all it does. It doesn't create a wild card that we apply six months down the road, a year down the road, and it doesn't change to create this in and out that one can be a Sub V debtor on day one and not on day two, and then again on day three, and not on day four. That's what the statute says, Judge, and we ask that you apply it.

THE COURT: Thank you.

Anyone else wish to address the Court with respect to the -- I'll go with the -- taking those who are in favor, those

who are against. Anyone else, just maybe not for or against, but filed something and want to say something?

MS. FREEMAN: Hello, Judge. Liz Freeman on behalf of Melissa Haselden, the Sub V trustee. Judge, we filed a very limited response, primarily as an officer of the court, and hopefully to assist the Court in its analysis here, not so much because we're trying to advocate a position in this case in a vacuum, but instead because how Subchapter V, you know, provisions are interpreted, you know, are important to the trustee. We believe that they're important to the Court.

And we are mindful of the importance of this particular decision, not only in the case, but across the spectrum of Subchapter V juris prudence. We have a statute that is not especially well written. Congress amended 1182 to address one problem, and through the addition of a lot of the language created a whole nother set of problems.

It is not a situation where we think that the statute's incredibly clear. You know, we don't have the benefit of black letter law that clearly dictates exactly what the Court should do. So we think that what the Court needs to evaluate is two primary things. First, the appropriate utilization of Section 105. In U.S. v. Sutton, the U.S. Supreme Court provided that 105 was used to be basically a gap filler, to assist the Court in facilitating the provisions of the Bankruptcy Code that currently existed. And it warned

against the interpretation of 105 as authorizing the Court to be a roving commission on equity.

So, while I am frequently a party that will file a pleading utilizing 105, I appreciate the benefits of 105. I think that it can be a helper provision, but needs to be interpreted as a helper provision for the provisions of the code itself, and not be utilized to try to do equity in a case where perhaps there is case law or there is a statutory provision that we don't like. And we're concerned that that may be the situation here. We don't believe that utilization of 105 to remove the election is appropriate in this case.

With regards to the interpretation of the debt limits and whether or not the debts of the affiliate should be looked at on the petition date of the debtor itself, or on the filing of the subsequent entity, it appears to us, to the trustee, that the snapshot rule is instructive here.

With the exception of certain findings of the Fifth Circuit with regards to homestead exemptions, it is generally viewed that, when you have debt limitations and temporal limitations in the bankruptcy code, that you look at a snapshot of the situation on the petition date itself. This is true for eligibility for Chapter 13. This is the basis of the decision that was made by the court in the Parking Management case.

The trustee's belief here is that it is appropriate to take a snapshot of the debt, of the debtor, and its

affiliates that were also debtors on the filing date. And the trustee is concerned that in situations where you have affiliates that file later on, and well after the deadline for objecting to the certification of the Sub V, that that simply runs against the grain, the way that the bankruptcy code works in so many other sections. There just isn't precedent under code for that type of interpretation, and we believe that, if the Court were to make that finding, that can set a dangerous precedent in Subchapter V cases.

The trustee is concerned about examples that you raised, where you have an affiliate that file a later Chapter 11 case. I would also suggest that you could run into situations where you have an affiliate file a Chapter 7 and choose to liquidate, or perhaps you have an individual who's a proprietor of a business in a Sub V case later file a Chapter 13. Would the mortgage debt of that individual cause the Sub V debtor to later become ineligible for that case?

We think that the cleanest interpretation, Your Honor, is for the judge to utilize the theory of the snapshot rule, look at the language of the statute, evaluate the debt of the debtor and its debtor affiliates on the petition date, and determine eligibility on that date, and decline to utilize Section 105 to remove the certification of the Sub V.

THE COURT: Thank you.

MS. FREEMAN: I'm happy to answer any questions you may have.

THE COURT: No questions. Thank you.

MR. KIMPLER: Your Honor, if I could just have two more minutes?

THE COURT: Absolutely. No, no, no. Absolutely. I want you to take as much time as you need. This is important.

MR. KIMPLER: Again, it's Kyle Kimpler from Paul Weiss on behalf of the Connecticut plaintiffs. Your Honor, I wanted to start with a little bit of the colloquy between --

THE COURT: Actually, before you start, Mr. Kimpler. Ms. Stephenson had her hand up and I want to make sure that I'm being --

MR. KIMPLER: Of course.

THE COURT: No, no. I literally just saw the hand raise feature that I -- Ms. Stephenson, do you have any comments before --

MS. STEPHENSON: Just briefly, Your Honor --

THE COURT: -- Mr. Kimpler, related to this?

MS. STEPHENSON: Yes. Yes, Your Honor. Just in support. Just very brief, Your Honor.

THE COURT: Support of what?

MS. STEPHENSON: Oh, I'm sorry. I'm sorry. In support of the Sub V trustee and FSS's arguments. Is that okay, Your Honor? I'll keep it very brief.

THE COURT: Go ahead.

MS. STEPHENSON: Your Honor, we just wanted to add our support for the arguments made by Mr. Battaglia and the Sub V -- the Sub V trustee, just very quickly. We believe that, you know, that this case will be used in the future as support in other cases, you know, however Your Honor comes down on this.

This is definitely, as a case of first impression, going to be an issue that is used a lot. And as a bankruptcy practitioner myself, I am wondering, you know, how we are going to advise our clients on, you know, in future Sub V cases as to, you know, when does the measuring stop, and what we're going to tell our clients?

And as far as 105 is concerned, you know, I would echo the statements of the Sub V trustee that it's a provision that needs to dance with another bankruptcy code section that -- that came from Judge Houser when she was my professor at SMU -- that 105 needed to dance with another code section.

And these parties, Your Honor -- I just wanted to remind everyone that these parties, the movants, did successfully object to the joint administration motion that Mr. Jones filed initially in his bankruptcy case on the basis that FSS was a Sub V debtor and Mr. Jones was a Chapter 11 debtor. And that's why we weren't able to jointly administer these cases.

So -- and I'll just say in parting, you know, in conclusion, FSS -- if FSS is not going to be a Sub V debtor, we will need to sort of drastically rethink, you know, how the Jones case is going to proceed. That's all. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Kimpler. I promise I'm not going to pay attention to anyone else on the -- you've got my full attention.

MR. KIMPLER: Your Honor, you can pay attention to whoever you would like to.

THE COURT: No, no.

MR. KIMPLER: Kyle Kimpler, again, from Paul Weiss, on behalf of the Connecticut plaintiffs. Your Honor, I wanted to start with the conversation you had with Mr. Ha [sic] and a couple questions you had raised.

One question was is anybody in this courtroom aware of a rule where a debtor loses eligibility post-petition. I am not. What I am aware of is that the only other sections of the bankruptcy code that impose these types of eligibility requirements all use the words "as of the petition date." If you look at Section 109(e) of the bankruptcy code, which governs Chapter 13 eligibility. If you look to a lot of the cases you're hearing about, Parking Management, where the Court was asking, you know, whether leases rejected on day one. You

know, if you read that decision, it could not be more clear that that decision is grounded in the language of Section 1182(1)(a) which says, as of the petition date.

So no, I am not aware of any case where a debtor loses eligibility post filing. That's because all of those other cases have statutory language that says "as of the petition date."

I also wanted to talk about the Rule 1020 and I think, you know, Your Honor, is struggling maybe, hopefully not, on, you know, how you get there to give this relief. So I want to go back, Your Honor, to Rule 1020, because I think everything we've been focused on today is Rule 1020(b).

1020(b) says that the U.S. Trustee or a party in interest can file an objection within 30 days. Doesn't talk about what the Court can do. So what I would point Your Honor to is Rule 1020(a), and in particular the last sentence of Rule 1020(a). I'll quote, "The status of the case as a small business case or a case under Subchapter V Chapter 11 shall be in accordance with the debtor's statement unless and until the Court enters an order finding that the debtor's statement is incorrect."

There is no temporal limitation there. If this Court determines that the statement is incorrect, this Court has the authority to revoke the Subchapter V election. So that then raises the question. Is the date -- the debtor's statement

correct? And when you go back to 1182, and you read it, it says, "the term 'debtor' does not include any member of a group of affiliated debtors that has aggregate, non-contingent, liquidated, secured and unsecured debts in an amount greater than $7.5 million."

In my view, that is the end of the analysis. You don't have to read (a) to conclude that the debtor is not eligible. The requirements of (b) stand on their own. And the one thing I have not heard from any of my opponents here is how does the word "subject to" in (a) mean that it is, in fact, (b) that is governed by (a), and not the other way around?

It is subparagraph (a) that is subject to subparagraph (b). Subparagraph (b) controls in the event of a conflict. It is the governing provision, and it stands on its own. The debtor does not satisfy it. Its election in its petition sitting here today is not correct. And under Rule 1020(a), this Court, I believe, has ample authority to revoke that election.

Turning quickly, Your Honor, to the comments from counsel for Free Speech. There was a suggestion that the claims were liquidated on December 2nd, so the fact that the judgments were entered on December 22nd is of no moment. The debtor does not agree with that position. The petition they filed on December 2nd said the families' claims were unliquidated. And in any event, I think we are splitting hairs

at this point. There is -- whether the delay that we are measuring is from December 2nd or December 22nd to February 15th, I don't really believe is material to the ultimate analysis of whether there is excusable neglect, if even that were the standard.

I think the real question is what is the harm? And the only thing I heard articulated as the harm of granting this relief is that the debtor will lose access to Subchapter V, that the debtor may have to have a creditors' committee, that the debtor may have to comply with rules that it doesn't want to. And that is just not a proper articulation of harm under the excusable neglect standard.

An analogy would be a claimant filing a late -- a motion to file a late proof of claim and -- under Pioneer. And the Court asks, well, what is the harm of me allowing this late claim? And the debtor says, well, if that claim is allowed, then I have to honor the claim. But that's not the standard. If it was the standard, then there would never be excusable neglect.

On the statutory analysis argument, we heard that we are trying to write out words of the statute. I don't understand that argument, Your Honor. There is not a single word in 1182 that I am not giving effect to. The words "as of the petition date" matter. They matter in subparagraph (a) and they matter when you're measuring the debts of the debtor.

Subparagraph (b) is a separate, stand-alone section, and our interpretation of the statute does not "blue pencil" or leave out any words. There is not one word that is surplus, under our interpretation.

I'm going to briefly respond to the argument that there are other creditors that don't like the relief that the families are seeking --

THE COURT: You don't have to worry about that.

MR. KIMPLER: They've not raised an objection. And then finally, on this, quote, unquote "snapshot" rule. Again, the snapshot rule comes from cases applying provisions that have the words "as of the petition date." That is the origin of the snapshot rule. That's the articulation of the court in the Parking Management case. There is no similar language in subparagraph (b).

Your Honor, I think that's all I had, unless you had questions of me.

THE COURT: No, no, no. Very much appreciate all the --

MR. KIMPLER: Thank you.

THE COURT: -- arguments of the parties.

MR. KIMPLER: Appreciate your time.

THE COURT: I want to check -- you all have given me something to think about, and I want to check on something. I'm going to rule today. Give me -- I want to go back and just

check on one thing before I come out and render a decision.

It is 2:48. When we come back, I will -- I'm going to keep the line unmuted. I'm going to mute the line here. Just be careful, folks. I'm going to come back at 3:10 and render the decision. Twenty minutes. Okay.

(Recess taken at 2:48 p.m.)

(Proceedings resumed at 3:11 p.m.)

THE COURT: Good afternoon, everyone. This is Judge Lopez, back on the record in Free Speech Systems, addressing the motion filed by the Texas and Connecticut plaintiffs to revoke the Subchapter V election of the debtor.

I'm going to -- well, let's see. The entire line is now muted. Okay. No, not really. For those who had their lines unmuted by the Court, I'd ask that you please mute your line so I can read the decision in. I will let the parties know, in light of everyone telling me it's a matter of first impression, I'll -- give me a day or two, and I will dot my I's and cross my T's and get something out that the parties can have in writing. It's important enough, and I want to make sure everybody has something in writing.

I'm going to read the decision in here. What I submit will not be materially different. Might be some editing stuff, but the substance will be there. So okay.

This relates to Docket 468. I'm going to note the debtor filed a voluntary bankruptcy petition in July of 2022

and elected to proceed as a Subchapter V case. The petition was signed initially by the debtor's former CRO. And in December 2022, Alex Jones, who owns the debtor, filed a separate Chapter 11 case.

The Connecticut plaintiffs and the Texas plaintiffs acknowledge that the debtor was eligible as a Subchapter V debtor at the time of filing, but argue it lost eligibility after Jones started his bankruptcy case. So they seek an order revoking the debtor's Subchapter V election and changing this case to a traditional Chapter 11 one.

Thus, the Court must examine whether eligibility of a Subchapter V debtor may be impacted by post-petition bankruptcy filing of an affiliate, whether the Court has the power to revoke a Subchapter V election and, if so, under what circumstances is appropriate.

After carefully analyzing the text and structure of the Bankruptcy Code and the arguments of counsel, I'm going to find that the debtor remains eligible under Subchapter V, and that it's also in the best interest of the estate and its creditors to stay as a Subchapter V case for now.

By now it's well-known that the plaintiffs sued the debtor and Jones in Texas and Connecticut state courts. These lawsuits eventually resulted in default judgments. But before the damages trial in Texas concluded, damages trial in Connecticut started, the debtor started this bankruptcy case

and elected to proceed under Subchapter V. I would note the Bankruptcy Code provides that it is the debtor who makes the election under Subchapter V.

Early into this case, the Court entered agreed orders modifying the automatic stay to allow the state court actions to conclude. In October of 2022, a jury awarded about 1.5 billion in damages to the Connecticut plaintiffs. In December 2022, Jones started his bankruptcy case. Several months later, in February 2022 [sic] the plaintiffs moved to revoke the debtor's Subchapter V election. They argue that the debtor stopped qualifying as an eligible Subchapter V debtor once Jones filed his Chapter 11 case. The plaintiffs asked the Court to revoke the Subchapter V election rather than dismiss the case or convert it because they believe it serves the best interests of the debtor's estate and its creditors, reflects Congressional intent in enacting Subchapter V, and is the most constructive path forward.

The U.S. Trustee filed a response supporting the plaintiff's motion.

The debtor disagrees for several reasons. First, it argues the Court lacks authority to de-designate a Subchapter V election because no provision of the Bankruptcy Code allows for it. Second, the bankruptcy -- the debtor maintains its Subchapter V eligibility and it was not impacted by Jones' case, and that the text of the Bankruptcy Code supports its

position. And finally, it believes that staying in Subchapter V serves the best interests of all parties, given the current state of this case and the cost involved in a traditional Chapter 11.

This is a core proceeding under 28 U.S.C. Section 157(b)(2)(A). The Court has jurisdiction under 28 U.S.C. 1334. And I'll note that the parties express an implied consent, also provides the Court constitutional authority to enter a final judgment.

The legal dispute requires an in-depth analysis of Subchapter V of the Bankruptcy Code. Thus, as always, the Court begins with the text. Fifth Circuit has said in Whitlock v. Lowe, 945 F.3d 943, "In matters of statutory interpretation, the text is always the alpha."

Supreme Court has said "Words and phrases in a statute are considered holistically, including the full text language, as well as the punctuation structure and the subject matter. Statutes should be construed so that effect is given to all of its provisions so that no part will be inoperative or superfluous, void, or insignificant." You'll have the cases.

And finally, "The preeminent canon of statutory interpretation requires [the court] to presume that [the] legislature says in its statute what it means and means in a statute what it says there."

Section 1182(1) defines a Subchapter V "debtor," and

I put "debtor" in quotes, and lists the eligibility requirements. 1182(1) says, among other things, that subject to subparagraph (b) the debtor may not have more than 7.5 million in aggregate, non-contingent, liquidated secured and unsecured debts as of the date of the filing of the petition.

Subparagraph (b) says that the term "debtor" -- and I use that in quotes -- does not include any member or group of affiliated debtors in a bankruptcy that has aggregate debts above the 7.5 million cap. That's a general definition.

Plaintiffs focus on the fact that subparagraph (b) does not include the phrase "as of the petition date" of the -- as of the -- excuse me -- "as of the date of the filing of the petition." So, according to them, that makes subparagraph (a) temporal with respect to the debt, and subparagraph (b) a continuing obligation. Thus, if an affiliate of the debtor later files a traditional Chapter 11 case or 7 with debts exceeding the cap, it makes the first debtor ineligible under Subchapter V. Plaintiffs believe that the debtor lost eligibility once Jones filed the bankruptcy case because he's an affiliate of the debtor whose debts exceed the 7.5 million cap.

The debtor disagrees and argues that eligibility is determined and fixed as of the petition date, subject to a challenge period under Bankruptcy Rule 1020 had already expired.

The text and structure of the Bankruptcy Code and the bankruptcy rules prove that the debtor is right. Bankruptcy Rule 1020(a) requires a debtor to state in its voluntary petition if it elects to proceed under Subchapter V. Question 8 of the voluntarily petition, which is Official Form 201, requires a debtor seeking to proceed under Subchapter V to check a box stating that the debtor is a debtor as defined in 1182(1) and its aggregate, non-contingent liquidated dates, excluding insiders or affiliate, are less than 7.5 million, and it chooses to proceed under Subchapter V.

1182(1)(a) states that subject to subparagraph (b) states -- excuse me. Section 1182(1)(a) states that it's subject to subparagraph (b). So a debtor must satisfy both prongs on the petition date before it should check the box electing to proceed as a Subchapter V case.

Sub (b) is therefore a petition date check on a filing debtor to make sure there isn't already an affiliate in bankruptcy with debts exceeding the cap, and check that the debtor isn't part of a group of affiliated debtors filing on the same day. This check would also apply if a debtor later amended its voluntary petition, for example, under Bankruptcy Rule 1009. So, subparagraphs (a) and (b) are to be construed together at the same time, all the time.

No one disputes that the debtor's election to proceed under Subchapter V on its petition date, Jones is in a

traditional Chapter 11 case. It wasn't eligible for Subchapter V on his petition date because the debtor had started the bankruptcy case, and the judgments in the Texas and Connecticut lawsuits were liquidated; in other words, he would have failed 1181 -- 1182(1)(a) and (b).

The bankruptcy rules confirm a voluntary petition date or subsequent amendment date eligibility analysis. Bankruptcy Rule 1020(a) says a bankruptcy case proceeds in accordance with a debtor's statement of election in the petition unless and until the Court enters an order finding that the debtor's statement is incorrect. 1020(b) allows parties to challenge the debtor's statement of election no later than 30 days after the meeting of creditors under Section 341 of the Bankruptcy Code, or within 30 days after any amendment, whichever is later.

So, to recap, the debtor makes the statement of election to proceed under Subchapter V in a bankruptcy petition, then proceeds in accordance with the statement of election and, unless the Court findings that the statement is incorrect, the date or statement of election on its voluntary petition and the basis for making it as of that day remain true, and the time provided for it under Rule 1020(b) has long expired in this case.

The plaintiffs correctly note that Jones filed his case after the applicable challenge period expired. I mean,

technically, you didn't have a chance to timely object until then, although waiting at least over 60 days after the Jones petition date is considerably late, regardless.

It doesn't change the answer here. Section 1182 in the bankruptcy rules must be construed strictly according to the text and how they comport within the overall structure of Subchapter V. There is no rule or procedure to challenge a debtor's eligibility under Subchapter V beyond the period in Rule 1020(b). Thus, eligibility is best construed as fixed after the challenge period under Rule 1020(b) expires.

It's the only way to construe the text in a manner that gives meaning to every word of Section 1182 in the bankruptcy rules. It's not the role of a Court to second-guess Congress's judgment about the need for finality on this point. For this, I cite the Bartenwerfer decision.

The plaintiffs believe that the Court should consider an objection under 1020(b) under excusable neglect. While 9006(b) would permit it on a motion made after the expiration after the specified period permitting the act to be done, excusable neglect is the failure to timely perform a duty due to circumstances that were beyond the reasonable control of the person whose duty it was to perform. Determining whether the movants have established excusable neglect, the Fifth Circuit have considered certain factors, including the danger of prejudice to the debtor, the length and delay of its potential

impact on judicial proceedings, the reason for delay, and whether the movant has acted in good faith. Good faith is not an issue here today.

The inquiry at the bottom is an equitable one. The burden to show excusable neglect is a common one. I would note that at the outset Mr. Battaglia is right. There has never been a motion for -- seeking excusable neglect. The first time excusable neglect was raised was actually in the reply brief. So there's never been a formal motion seeking an extension of time. There is substantial harm to the debtor for the reasons I will give to you in a moment and explain more below.

Subchapter V in many ways is substantially different than a traditional Chapter 11 case in terms of the pace of the case, the statutory requirements of the case. In many ways they're the same, but in many ways, the material ways, they're very different.

I would note that at least 65 days is more than enough time to have brought a challenge to the Subchapter V election. I would note that these are the Texas and Connecticut plaintiffs. The sophistication of counsel argument, I understand it, but it really bears no -- to me, they're all brilliant lawyers here. (Indiscernible) so it did nothing that's even questionable, even remotely questionable. I just think that the time period -- and I understand why they did what they did. I just think there's been more than enough

time to bring one, and I think that that factor brings substantial harm to the debtor.

Limiting eligibility challenges to the debtor's statement of election, right, also makes practical sense in a Subchapter V case. Subchapter V is a streamlined Chapter 11 process, and a debtor has to work from the outset. The Court must hold a status conference 60 days into a case to further the expeditious and economic resolution of the case.

No later than 14 days before the status conference, the debtor is required to submit a status report detailing efforts undertaken to obtain a consensual Chapter 11 plan. And only the debtor can file a plan. And it must do so no later than 90 days in a case unless the Court fins that the needs for an extension is attributable to circumstances for which the debtor should not justly be held accountable. All right. And if the debtor fails to timely file a plan, it constitutes, in this Court's opinion, cause to dismiss the case.

I would note that there's a Subchapter V plan, and I have found that there's been necessity for an extension in this case. If post-petition events lead to ineligibility and revocation, it means that debtors can float in and out of Subchapter V at any time. That's the problem highlighted in the In Re Parking Management decision cited by the debtor. While that case focused on eligibility and the debtor's own debts, rather than the aggregate debts of a group of affiliated

debtors, the court held generally that opening up the eligibility determinations to post-petition events, even if deemed to apply retroactively, is contrary to the purpose and spirit of Subchapter V and could nullify the very benefits it intended to convey.

A rolling eligibility trap could also punish an innocent Subchapter V debtor. For example, a corporate debtor with its own board could decide to file a Subchapter V case and be subject to losing eligibility, presumably even while soliciting a plan, just because a parent company with a separate board, and perhaps even its own separate independent debt, decided to file its own case later on. A better reasoned approach is to allow the first case to proceed after the challenge period expires and prohibit the second one from proceeding under Subchapter V if it tried to do so.

I believe there's a reason the plaintiffs asked the Court to revoke the Subchapter V 11 using, among other things, Section 105 of the Bankruptcy Code, that the Bankruptcy Code and the bankruptcy rules don't provide a standard for assessing a motion to amend a bankruptcy petition to revoke a Subchapter V election (indiscernible) the Court to revoke it outright.

There is a decision holding that a court is empowered to de-designate a Subchapter V case and allow it to proceed as a regular Chapter 11 pursuant to, among other things, Section 105. That's the National Small Business Alliance case. The

facts in that case, including a failed attempt to confirm a fifth amended and revised Chapter 11 plan, are from from present here. And as the Bankruptcy Court for the District of Delaware recently explained in In Re ComedyMX, "The decision to proceed under Subchapter V is within the exclusive province of the debtor. There can be no suggestion that a creditor may move a court to amend a petition to designate a case as one under Subchapter V over a debtor's objection. Notwithstanding the language of Rule 1009(a), stating that a petition may be amended on a motion of a party in interest, it cannot be argued that parties in interest have carte blanche to file a motion seeking to move debtors in or out of Subchapter V as they see fit."

Revocation leads to additional problems. If this Court were to revoke a Subchapter V election, Subchapter V trustee would be immediately discharged, but nothing in the code allows for this. Right? On the contrary, 1183(c) states that the service of the trustee, right, in a Subchapter V case terminates when the plan is substantially consummated. Right? There's no procedure for what happens to a Subchapter V trustee, and that's because it's not contemplated by the code.

Without express authority from the Bankruptcy Code to revoke a Subchapter V election, this Court won't do it. Nothing is also in the code to suggest that any revocation authority the Court may hold means a Subchapter V case is

converted to a traditional Chapter 11 case. Bankruptcy Code authorizes dismissal or conversion for cause and debtors may elect to amend their petition.

Subchapter V differs from a traditional Chapter 11 case in material ways. Consider, for example, the plan confirmation process. Subchapter V debtor has the right to seek confirmation of a non-consensual plan, even if no class of creditors votes for it, and the absolute priority rule wouldn't apply. Forcing the debtor to conform to a new Chapter 11 process with increased attendant costs, new deadlines, debtor in this case would likely have to file an entirely new Chapter 11 plan, right, and wait for the formation of an unsecured creditors' committee. There's a time delay here. None of that is prescribed under the code.

In any event, even if the Court could revoke a Subchapter V selection, it wouldn't do so in this case. The primary reason the damages portion of the Texas and Connecticut cases concluded was that this court entered an agreed order modifying the stay to allow them to proceed and to conclude, and the debtor, the plaintiffs, and Jones, currently engaged in mediation, to the best of the Court's knowledge. The debtors also filed a Subchapter V plan and two non-dischargability adversary cases have started against the debtor. The issues that will define this case are quickly coming to a head, and this Court is ready to address them with all due process.

So, for the reasons stated above, I'm going to order that the motion to revoke the debtor's Subchapter V election is denied. I'll get you something more official in writing. I appreciate all the arguments from all the parties. Give me a day or two to make sure that my Blue-booking and all that stuff is done correctly. Nothing will substantially change. I think everyone's entitled to that in writing. There's an audio that provides for it.

I appreciate all the arguments of the parties. You know, a lot has been said about timing. I'm honored that some of the smartest lawyers in America have been appearing in this case to talk about these issues, and it only makes the process all the better, allows the Court to consider issues. So I appreciate Texas counsel, Connecticut counsel, debtor's counsel, Subchapter V trustee and her counsel, and United States Trustee.

That's my ruling. I'll get you something in writing. I think everyone deserves a written decision on this one. It's important that you have it, and (indiscernible) just wait for that.

I am -- I do want to stress the importance. I think what this case has shown me for sure, which is on everyone's mind -- no question about it -- is we've got to focus these cases and figure out either the plan is confirmed, not confirmed, deal with dischargability issues. So I am going to

look at my calendar. And if I can do it earlier, I'll do it earlier, in terms of scheduling. I don't think there's many -- y'all can tell me in terms of how much time everybody's going to need.

So I'd ask plaintiff's counsel to -- why don't you get with Mr. Battaglia and just start figuring out what dates would look like. I won't stand in the way of a reasonable scheduling order. But I do agree it's been a lot of time in this case, and I understand the parties are in mediation. And I don't like talking while parties are in the middle of mediation. And I have no idea what's happening in mediation. And so I don't know whether things are positive or not positive, and that's not for me to know. The process works better and it's intended for me not to know anything, but I would stress I'm ready to answer questions and I'm ready to deal -- tee the issues up before me, and let me take them up one at a time, and we'll deal with them in due course.

Everybody's time is going to be respected. I don't want to rush anything. But the issues that need to come before me, I'm going to start pushing that they get before me in reasonable time, not just in the Free Speech case, but in Mr. Jones' case as well. I think we need to set a status conference in that one, as well. I haven't looked at that case as well. But -- and I understand the parties are going to work on -- and I don't want to get in the way of discussions on a

potential agreed order. But if there's not one, then I want to take that issue up as well. I'll be ready to deal with it.

Any questions about anything? Okay. Everyone, thank you for your time. Have a good day.

(Proceedings concluded at 3:34 p.m.)

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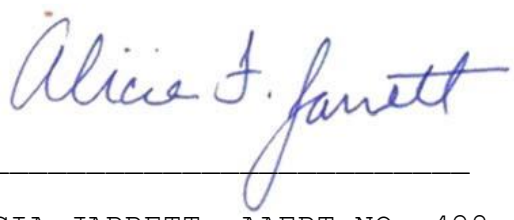
C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



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ALICIA JARRETT, AAERT NO. 428 DATE: April 5, 2023

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